

# Redline of Changes Against Model Protective Order

**WILLKIE FARR & GALLAGHER LLP**

Benedict Y. Hur (SBN: 224018)

bhur@willkie.com

Simona Agnolucci (SBN: 246943)

sagnolucci@willkie.com

Jayvan E. Mitchell (SBN: 322007)

jmittchell@willkie.com

Amanda Maya (SBN: 324092)

amaya@willkie.com

Eduardo E. Santacana (SBN: 281668)

esantacana@willkie.com

One Front Street, 34th Floor

San Francisco, CA 94111

Telephone: (415) 858-7400

Facsimile: (415) 858-7599

Attorneys for Defendant Google LLC

**BOIES SCHILLER FLEXNER LLP**

Mark C. Mao (CA Bar No. 236165)

mmao@bsflp.com

44 Montgomery Street, 41<sup>st</sup> Floor

San Francisco, CA 94104

Telephone: (415) 293 6858

Facsimile: (415) 999 9695

**SUSMAN GODFREY L.L.P.**

William Christopher Carmody (*pro hac vice*)

bcarmody@susmangodfrey.com

Shawn J. Rabin (*pro hac vice*)

srabin@susmangodfrey.com

1301 Avenue of the Americas, 32nd Floor

New York, NY 10019

Telephone: (212) 336-8330

**MORGAN & MORGAN**

John A. Yanchunis (*pro hac vice*)

jyanchunis@forthepeople.com

Ryan J. McGee (*pro hac vice*)

rmcgee@forthepeople.com

201 N. Franklin Street, 7th Floor

Tampa, FL 33602

Telephone: (813) 223-5505

Attorneys for Plaintiffs; additional counsel  
listed in signature blocks below

~~UNITED STATES DISTRICT COURT~~

~~NORTHERN DISTRICT OF CALIFORNIA~~

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

~~Plaintiff,~~

ANIBAL RODRIGUEZ, JULIEANNA  
MUNIZ, ELIZA CAMBAY, SAL  
CATALDO, EMIR GOENAGA, JULIAN  
SANTIAGO, HAROLD NYANJOM,  
KELLIE NYANJOM, and SUSAN LYNN  
HARVEY, individually and on behalf of all  
other similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. ~~C~~ 3:20-cv-4688-RS

**STIPULATED PROTECTIVE ORDER** ~~FOR  
LITIGATION INVOLVING PATENTS, HIGHLY  
SENSITIVE CONFIDENTIAL INFORMATION  
AND/OR TRADE SECRETS~~

Judge: Honorable Richard Seeborg

Court: Courtroom 3 - 17th Floor

Date Filed: July 14, 2020

Trial Date: None Set

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the ~~parties~~Parties hereby stipulate to and petition the ~~court~~Court to enter the following Stipulated Protective Order. The ~~parties~~Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The ~~parties~~Parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a ~~party~~Party seeks permission from the ~~court~~Court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

~~{~~2.4 ~~Optional~~: Designated House Counsel: House Counsel who seek access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter~~}~~.

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~{Optional~~: or “HIGHLY CONFIDENTIAL – SOURCE CODE”~~}~~.

2.6 Disclosure or Discovery Material: all items or information, regardless of the

medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

~~2.9 Optional:~~ "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely sensitive "Confidential Information or Items" representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.  
~~less restrictive means.]~~

2.10 House Counsel: attorneys who are members in good standing of at least one state bar, who are employees of a ~~party to~~ Party and who have responsibility for managing this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a ~~party to this action~~ Party and have appeared in this action on behalf of that ~~party~~ Party or are affiliated with a law firm which has appeared on behalf of that ~~party~~ Party.

2.13 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.15 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) ~~and their employees and subcontractors, and professional jury or trial consultants) and their employees and subcontractors, who (1) have been retained by a Party or its counsel to provide litigation support services with respect to this action, (2) are (including any employees and subcontractors) not a past or current employee of a Party or have not been employed within the past five years by a Party's competitor, and (3) at the time of retention, are not anticipated to become an employee of a Party or of a Party's competitor.~~

2.16 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," ~~[Optional:]~~ or as "HIGHLY CONFIDENTIAL – SOURCE CODE." ~~]~~.

2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including

becoming part of the public record through trial or otherwise; and (b) any information

known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

#### 4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a ~~court~~Court order otherwise directs. Final disposition shall be deemed to be ~~the later of~~(1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) entry of a final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

#### 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other ~~parties~~Parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other ~~parties~~Parties that it is withdrawing the mistaken designation.

1           5.2    Manner and Timing of Designations. Except as otherwise provided in this Order  
 2 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
 3 Disclosure or Discovery

4           Material that qualifies for protection under this Order must be clearly so designated  
 5 before the material is disclosed or produced.

6           Designation in conformity with this Order requires:

7                   (a) for information in documentary form (e.g., paper or electronic documents, but  
 8 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
 9 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
 10 EYES ONLY” ~~Optional:~~ or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page  
 11 that contains protected material. If only a portion or portions of the material on a page qualifies  
 12 for protection and if practicable to do so, the Producing Party also must clearly identify the  
 13 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
 14 each portion, the level of protection being asserted.

15           A Party or Non-Party that makes original documents or materials available for inspection  
 16 need not designate them for protection until after the inspecting Party has indicated which  
 17 material it would like copied and produced. During the inspection and before the designation, all  
 18 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
 19 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
 20 copied and produced, the Producing Party must determine which documents, or portions thereof,  
 21 qualify for protection under this Order. Then, before producing the specified documents, the  
 22 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
 23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~Optional:~~ or “HIGHLY CONFIDENTIAL –  
 24 SOURCE CODE”) to each page that contains Protected Material. If only a portion or portions  
 25 of the material on a page qualifies for protection, the Producing Party also must clearly identify  
 26 the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify,  
 27 for each portion, the level of protection being asserted.

28                   (b) for testimony given in deposition or in other pretrial or trial proceedings, that



1 the Designating Party when practical identify on the record, before the close of the deposition,  
 2 hearing, or other proceeding, all protected testimony and specify the level of protection being  
 3 asserted. When it is impractical to identify separately each portion of testimony that is entitled to  
 4 protection and it appears that substantial portions of the testimony may qualify for protection, the  
 5 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding  
 6 is concluded) a right to have up to 21 days to identify the specific portions of the testimony as to  
 7 which protection is sought and to specify the level of protection being asserted. Only those  
 8 portions of the testimony that are appropriately designated for protection within the 21 days shall  
 9 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating  
 10 Party may specify, at the deposition or up to 21 days afterwards if that period is properly  
 11 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
 12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE  
 13 CODE.”

14 Parties shall give the other ~~parties~~ Parties reasonable notice (a minimum of two business  
 15 days) if they reasonably expect a deposition, hearing, or other proceeding to include Protected  
 16 Material so that the other ~~parties~~ Parties can ensure that only authorized individuals who have  
 17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those  
 18 proceedings. The specific document(s) which constitute Protected Material need not be disclosed  
 19 in advance of a deposition. The use of a document as an exhibit at a deposition shall not in any  
 20 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
 21 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

22 Transcripts containing Protected Material shall have an obvious legend on the title page  
 23 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
 24 pages (including line numbers as appropriate) that have been designated as Protected Material  
 25 and the level of protection being asserted by the Designating Party. The Designating Party shall  
 26 inform the court reporter of these requirements. Any transcript that is prepared before the  
 27 expiration of a 21-day period for designation shall be treated during that period as if it had been  
 28 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless

otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~Optional~~ or “HIGHLY CONFIDENTIAL – SOURCE CODE”~~21~~. If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any ~~Party or Non-Party~~ Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The ~~parties~~ Parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service

of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without ~~court~~Court intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or within 14 days of the ~~parties~~Parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.<sup>1</sup> Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. ~~Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.~~<sup>2</sup>

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose

<sup>1</sup> ~~Alternative: It may be appropriate in certain circumstances for the parties to agree to shift the burden to move on the Challenging Party after a certain number of challenges are made to avoid an abuse of the process. The burden of persuasion would remain on the Designating Party.~~

<sup>2</sup> In the event of repeated and abusive challenges, the Designating Party has the right to petition the Court and ask that the burden be shifted to the Challenging Party to file challenge motions. Even if granted, however, the burden of persuasion would remain on the Designating Party.

unnecessary expenses and burdens on other ~~parties~~Parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the ~~Producing~~Designating Party's designation until the ~~court~~Court rules on the challenge.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation-, and shall not be used for any business purpose, in connection with any other legal proceeding, or directly or indirectly for any other purpose whatsoever. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner<sup>3</sup> that ensures that access is limited to the persons authorized under this Order. Protected Material shall not be copied or otherwise reproduced by a Receiving party, except for transmission to qualified recipients, without the written permission of the Producing Party or by further order of the Court.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the ~~court~~Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be

---

<sup>3</sup> ~~It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected Material in password-protected form.~~

Bound” that is attached hereto as Exhibit A;

(b) ~~the officers, directors, and employees (including~~up to two House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the ~~court~~Court and its personnel;

(e) ~~court~~stenographic reporters, videographers and/or their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during ~~their~~ depositions and hearings, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless ~~otherwise agreed by~~ the Designating Party objects upon a notice of a deposition or calling a witness at a hearing, as described below, or otherwise ordered by the ~~court~~Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order. Upon notice of a deposition or calling a witness at a hearing, the Designating Party may identify Confidential documents that should not be shown to the witness, triggering an expedited duty to confer in advance of the deposition or hearing. If the parties cannot reach agreement, the Designating Party may seek a protective order in the ordinary course.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or personally knows or knew the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
~~[Optional: and “HIGHLY CONFIDENTIAL – SOURCE CODE”]~~ Information or Items. Unless otherwise ordered by the ~~court~~Court or permitted in writing by the Designating Party, a

Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~Optional: or “HIGHLY CONFIDENTIAL – SOURCE CODE”~~ only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

~~[(b) Optional as deemed appropriate in case specific circumstances: Designated House Counsel of the Receiving Party<sup>4</sup> (1) who has no involvement in competitive decision making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed];<sup>5</sup>~~

~~(e)~~(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4~~5~~(a)(2), below, have been followed~~;~~;

~~(d)~~(c) the ~~court~~Court and its personnel;

~~(e)~~~~court~~(d) stenographic reporters, videographers and their respective staff, professional jury or trial consultants,<sup>6</sup> mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and

<sup>4</sup>It may be appropriate under certain circumstances to limit the number of Designated House Counsel who may access “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information under this provision.

<sup>5</sup>This Order contemplates that Designated House Counsel shall not have access to any information or items designated “HIGHLY CONFIDENTIAL – SOURCE CODE.” It may also be appropriate under certain circumstances to limit how Designated House Counsel may access “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information. For example, Designated House Counsel may be limited to viewing “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information only if it is filed with the court under seal, or in the presence of Outside Counsel of Record at their offices.

<sup>6</sup>Alternative: The parties may wish to allow disclosure of information not only to professional jury or trial consultants, but also to mock jurors, to further trial preparation. In that situation, the parties may wish to draft a simplified, precisely tailored Undertaking for mock jurors to sign.

1 Agreement to Be Bound” (Exhibit A); and

2 ~~(f) the author or recipient of a document containing the information or a custodian or~~  
 3 ~~other person who otherwise possessed or knew the information.~~

4 7.4(e) the author or recipient of a document containing the information or a  
 5 custodian or other person who otherwise possessed or personally knows or knew the information,  
 6 unless the Designating Party objects upon a notice of a deposition or calling a witness at a  
 7 hearing, as described below, or otherwise ordered by the Court. For purposes of this provision,  
 8 Defendant will be deemed an “author or recipient” of any Discovery Material authored by an  
 9 employee of Defendant. During any testimony at a deposition, hearing, or trial, any current  
 10 employee of Defendant may be shown any document authored by anyone while employed with  
 11 Defendant; this includes an employee of Defendant’s parent Alphabet who was an employee of  
 12 Defendant at the time the document was authored. Upon notice of deposition or testimony at a  
 13 hearing or trial, a Designating Party may identify certain documents that are not to be shown to  
 14 the deponent or witness, triggering an expedited duty to meet and confer. If no agreement can be  
 15 reached, the Designating Party may seek a protective order in the ordinary course. If the witness  
 16 is a former employee of Defendant, Defendant shall have further right to request additional limits  
 17 on the use of certain documents even if authored or received by the witnesses, which request will  
 18 also trigger an expedited duty to meet and confer. If no agreement can be reached, the  
 19 Defendant may seek a protective order in the ordinary course.

20 7.4 Disclosure of “HIGHLY CONFIDENTIAL – SOURCE CODE”  
 21 Information or Items. Unless otherwise ordered by the Court or permitted in writing by the  
 22 Designating Party, a Receiving Party may disclose any information or item designated  
 23 “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

24 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
 25 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
 26 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
 27 Bound” that is attached hereto as Exhibit A;

28 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary



1 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”  
2 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.5(a)(2), below and  
3 specifically identified as eligible to access “HIGHLY CONFIDENTIAL – SOURCE CODE”  
4 Information or Items, have been followed;

5 (c) the Court and its personnel;

6 (d) stenographic reporters, videographers and their respective staff who have  
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) and are transcribing or  
8 videotaping a deposition wherein “HIGHLY CONFIDENTIAL – SOURCE CODE” Information  
9 or Items are being discussed, provided that such reporters and videographers shall not retain or  
10 be given copies of any portions of the source code, which if used during a deposition, will not be  
11 attached as an exhibit to the transcript but instead shall be identified only by its production  
12 numbers(e) while testifying at depositions, hearings, or trial in this action only: (i) any current or  
13 former officer, director or employee of the Producing Party or original source of the information;  
14 (ii) any person designated by the Producing Party to provide testimony pursuant to Rule 30(b)(6)  
15 of the Federal Rules of Civil Procedure; and/or (iii) any person who authored, previously  
16 received (other than in connection with this litigation), or was directly involved in creating,  
17 modifying, or editing the “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or  
18 Items, as evident from its face or reasonably certain in view of other testimony or evidence.  
19 Persons authorized to view “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or  
20 Items pursuant to this sub-paragraph shall not retain or be given copies of the “HIGHLY  
21 CONFIDENTIAL – SOURCE CODE” Information or Items except while so testifying. Only  
22 printed copies of the Source Code will be provided to testifying witnesses during their testimony.  
23  
24  
25  
26  
27  
28



7.5 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~[Optional: or “HIGHLY CONFIDENTIAL – SOURCE CODE”]~~ Information or Items to Designated House Counsel<sup>7</sup> or Experts.<sup>8</sup>

~~(a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full name of the Designated House Counsel and the city and state of his or her residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may become involved, in any competitive decision-making.~~<sup>9</sup>

(a)(1) [Purposefully left blank.]

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~[Optional: or “HIGHLY CONFIDENTIAL – SOURCE CODE”]~~ pursuant to paragraph 7.3(e**b**) or paragraph 7.4(b) first must make a written request to the Designating Party<sup>10</sup> that (1) identifies the general categories of “HIGHLY CONFIDENTIAL –

<sup>7</sup> ~~Alternative: The parties may exchange names of a certain number of Designated House Counsel instead of following this procedure.~~

<sup>8</sup> ~~Alternative: “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information or items may be disclosed to an Expert without disclosure of the identity of the Expert as long as the Expert is not a current officer, director, or employee of a competitor of a Party or anticipated to become one.~~

<sup>9</sup> ~~It may be appropriate in certain circumstances to require any Designated House Counsel who receives “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information pursuant to this Order to disclose any relevant changes in job duties or responsibilities prior to final disposition of the litigation to allow the Designating Party to evaluate any later-arising competitive decision-making responsibilities.~~

<sup>10</sup> For a Designating Party that is a Non-Party, experts previously disclosed and approved prior to the Non-Party’s production of any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” need not be disclosed to said Non-Party unless such Non-Party requests such

(Footnote Continued on Next Page.)

ATTORNEYS' EYES ONLY" ~~Optional~~ or "HIGHLY CONFIDENTIAL – SOURCE CODE"<sup>11</sup> information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,<sup>11</sup> and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.<sup>12</sup>

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified ~~Designated House Counsel or~~ Expert unless, within 14 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to ~~Designated House Counsel or~~ the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)

information prior to the production of any Protected Material. Moreover, unless otherwise requested by the Non-Party, subsequently disclosed experts need not be disclosed to the Non-Party before that Non-Party's Protected Material may be disclosed thereto.

<sup>11</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

<sup>12</sup> It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the termination of the litigation that could foreseeably result in an improper use of the Designating Party's "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information.

1 seeking permission from the court to do so. Any such motion must describe the circumstances  
 2 with specificity, set forth in detail the reasons why the disclosure to ~~Designated House Counsel or~~  
 3 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and  
 4 suggest any additional means that could be used to reduce that risk. In addition, any such motion  
 5 must be accompanied by a competent declaration describing the parties' efforts to resolve the  
 6 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and  
 7 setting forth the reasons advanced by the Designating Party for its refusal to approve the  
 8 disclosure.

9 (d) In any such proceeding, the Party opposing disclosure to ~~Designated House~~  
 10 ~~Counsel or~~ the Expert shall bear the burden of proving that the risk of harm that the disclosure  
 11 would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose  
 12 the Protected Material to its ~~Designated House Counsel or~~ Expert.

13 (e) A party who has not previously objected to disclosure of Protected Material to  
 14 an Expert or whose objection has been resolved with respect to previously produced Protected  
 15 Material shall not be precluded from raising an objection to an Expert at a later time with respect  
 16 to Protected Material that is produced after the time for objecting to such Expert has expired or if  
 17 new information about that Expert is disclosed or discovered. Any such objection shall be  
 18 handled in accordance with the provisions set forth above.

## 19 **8. PROSECUTION AND ACQUISITION BAR ~~{OPTIONAL}~~**

20 (a) Absent written consent from ~~the Producing Party,~~ Google LLC, any individual  
 21 who receives access to "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS'  
 22 EYES ONLY" ~~{Optional: or "HIGHLY CONFIDENTIAL – SOURCE CODE"}"~~ information  
 23 designated by Google LLC, shall not be involved in the prosecution of patents or patent  
 24 applications relating to ~~[insert subject matter of the invention and of highly confidential technical~~  
 25 ~~information to be produced];~~ the Firebase SDK, Firebase for Google Analytics, or Google Analytics  
 26 software or platform, including without limitation the patents asserted in this action and any  
 27 patent or application claiming priority to or otherwise related to the patents asserted in this  
 28 action, before any foreign or domestic agency, including the United States Patent and Trademark

Office (“the Patent Office”).<sup>13</sup> For purposes of this paragraph, “prosecution” includes any activity related to the competitive business decisions involving (i) the preparation or prosecution (for any person or entity) of patent applications, including among others reexamination and reissue applications or (ii) directly or indirectly participating, drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims.<sup>14</sup> To avoid any doubt, “prosecution” as used in this paragraph does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination-~~or, inter partes reexamination~~, inter partes review, post grant review or covered business method review). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~{Optional:}~~ or “HIGHLY CONFIDENTIAL – SOURCE CODE”<sup>15</sup> information is first received by the affected individual and shall end ~~two~~ ~~(2)~~ three (3) years after final termination of this action.<sup>15</sup> The Parties expressly agree that the Prosecution Bar set forth herein shall be personal to any attorney who reviews Prosecution Bar Materials and shall not be imputed to any other persons or attorneys at the attorneys’ law firm. It is expressly agreed that attorneys who work on this matter without reviewing Prosecution Bar Materials shall not be restricted from engaging in Prosecution Activity on matters that fall within the Prosecution Bar. An ethical wall shall be instituted between any attorney who reviews Prosecution Bar Materials and any attorney at the attorneys’ law firm who engages in activity subject to the foregoing bar.

9. ~~SOURCE CODE~~ ~~{Optional}~~ (b) Absent written consent from Google

<sup>13</sup> ~~It may be appropriate under certain circumstances to require Outside and House Counsel who receive access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information to implement an “Ethical Wall.”~~

<sup>14</sup> Prosecution includes, for example, original prosecution, reissue, inter partes review, post grant review, covered business method review and reexamination proceedings.

<sup>15</sup> ~~Alternative: It may be appropriate for the Prosecution Bar to apply only to individuals who receive access to another party’s “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” technical or source code information pursuant to this Order, such as under circumstances where one or more parties is not expected to produce “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that is technical in nature or “HIGHLY CONFIDENTIAL – SOURCE CODE” information;~~

LLC., any individual who receives access to “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information designated by Google LLC. shall not be involved in activity related to: (i) the acquisition of patents or patent applications (for any person or entity) relating to the Firebase SDK, Firebase for Google Analytics, or Google Analytics software or platform; or (ii) advising or counseling clients regarding the same. This Acquisition Bar shall begin when access to “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information is first received by the affected individual and shall end three (3) years after final disposition of this action as provided herein.

#### 9. SOURCE CODE

(a) To the extent production of source code becomes necessary in this case, a Producing Party may designate ~~source code~~ material as “HIGHLY CONFIDENTIAL - SOURCE CODE” if it comprises ~~or~~ includes, or substantially discloses confidential, proprietary or trade secret source code or algorithms. This material may include, among things, technical design documentation that comprises, includes, or substantially discloses source code or algorithms.

(b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information ~~[Optional:~~ including the Prosecution Bar set forth in Paragraph 8~~], and the Acquisition Bar set forth in Paragraph 8,~~ and may be disclosed only ~~to the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be disclosed,~~ as set forth in Paragraphs 7.3 and Paragraph 7.4, ~~with the exception of Designated House Counsel.~~<sup>46</sup>

(c) Any source code produced in discovery shall only be made available for inspection, not produced except as set forth below, in a format allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually agreeable times, at (1)

<sup>46</sup> ~~It may be appropriate under certain circumstances to allow House Counsel access to derivative materials including “HIGHLY CONFIDENTIAL – SOURCE CODE” information, such as exhibits to motions or expert reports;~~

1 an office of the Producing Party or the Producing Party's primary outside counsel of record or  
 2 (2) another mutually agreed upon location.<sup>17</sup> Any location under (1) or (2) shall be within the  
 3 United States. The source code shall be made available for inspection on a secured computer  
 4 (the "Source Code Computer") in a secured, locked room without Internet access or network  
 5 access to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer  
 6 any portion of the source code onto any recordable media or recordable device. The secured  
 7 computer shall have disk encryption and be password protected. Use or possession of any  
 8 input/output device (e.g., USB memory stick, mobile phone or tablet, camera or any camera-  
 9 enabled device, CD, floppy disk, portable hard drive, laptop, or any device that can access the  
 10 Internet or any other network or external system, etc.) is prohibited while accessing the computer  
 11 containing the source code. All persons entering the locked room containing the source code  
 12 must agree to submit to reasonable security measures to ensure they are not carrying any  
 13 prohibited items before they will be given access to the locked room. The computer containing  
 14 source code will be made available for inspection during regular business hours, upon reasonable  
 15 notice to the producing party, which shall not be less than 3 business days in advance of the  
 16 requested inspection. The Producing Party may visually monitor the activities of the Receiving  
 17 Party's representatives during any source code review, but only to ensure that there is no  
 18 unauthorized recording, copying, or transmission of the source code.<sup>18</sup> If, due to the COVID-19  
 19 epidemic, source code review under these parameters is not reasonably feasible, the parties shall  
 20 meet-and-confer concerning alternative methods of review. To the extent that the parties cannot  
 21 agree on a feasible alternative, the parties shall bring any dispute to the attention of the Court and

---

24 <sup>17</sup>~~Alternative: Any source code produced in discovery shall be made available for inspection in a~~  
 25 ~~format through which it could be reasonably reviewed and searched during normal business~~  
 26 ~~hours or other mutually agreeable times at a location that is reasonably convenient for the~~  
 27 ~~Receiving Party and any experts to whom the source code may be disclosed. This alternative~~  
 28 ~~may be appropriate if the Producing Party and/or its counsel are located in a different jurisdiction~~  
 29 ~~than counsel and/or experts for the Receiving Party.~~

<sup>18</sup>~~It may be appropriate under certain circumstances to require the Receiving Party to keep a~~  
~~paper log indicating the names of any individuals inspecting the source code and dates and times~~  
~~of inspection, and the names of any individuals to whom paper copies of portions of source code~~  
~~are provided.~~



1 this provision may be modified on a showing of good cause.

2 (d) ~~The~~ No person shall copy, e-mail, transmit, upload, download, print,  
 3 photograph or otherwise duplicate any portion of the designated “HIGHLY CONFIDENTIAL -  
 4 SOURCE CODE” material, except that the Receiving Party may request paper copies of limited  
 5 portions of source code ~~that are,~~ but only if and to the extent reasonably necessary for the  
 6 preparation of court filings, pleadings, expert reports, or other papers, or for deposition or trial,  
 7 ~~but.~~ In no event may the Receiving Party print more than 25 consecutive pages, or an aggregate  
 8 total of more than 500 pages, of source code during the duration of the case without prior written  
 9 approval by the Producing Party. The Receiving Party shall not request paper copies for the  
 10 purposes of reviewing the source code other than electronically as set forth in paragraph (c) in  
 11 the first instance. ~~The~~ Within 5 business days or such additional time as necessary due to volume  
 12 requested, the Producing Party ~~shall~~ will provide ~~all such source code in the~~ requested material on  
 13 watermarked or colored paper ~~form including bates~~ bearing Bates numbers and the ~~label~~ legend  
 14 “HIGHLY CONFIDENTIAL - SOURCE CODE.” ~~The~~ unless objected to as discussed  
 15 below. At the inspecting Party’s request, up to two additional sets (or subsets) of printed source  
 16 code may be requested and provided by the Producing Party in a timely fashion. Even if within  
 17 the limits described, the Producing Party may challenge the amount of source code requested in  
 18 hard copy form or whether the source code requested in hard copy form is reasonably necessary  
 19 to any case preparation activity pursuant to the dispute resolution procedure and timeframes set  
 20 forth in Paragraph 6 whereby the Producing Party is the “Challenging Party” and the Receiving  
 21 Party is the “Designating Party” for purposes of dispute resolution. Contested printouts do not  
 22 need to be produced to the Receiving Party until the matter is resolved by the Court

23 (e) The Receiving Party shall maintain a record of any individual who has  
 24 inspected any portion of the source code in electronic or paper form. The Receiving Party shall  
 25 maintain all ~~paper copies of any printed portions of the source code in a secured, locked area.~~  
 26 ~~The~~ printed portions of the source code in a secured, locked area under the direct control of  
 27 counsel responsible for maintaining the security and confidentiality of the designated materials.  
 28 Any paper copies designated “HIGHLY CONFIDENTIAL - SOURCE CODE” shall be stored or

viewed only at (i) the offices of outside counsel for the Receiving Party, (ii) the offices of outside experts or consultants who have been approved to access source code; (iii) the site where any deposition is taken (iv) the Court; or (v) any intermediate location necessary to transport the information to a hearing, trial or deposition. Except as provided in subsection (i) of this section, the Receiving Party shall not create any electronic or other images of the paper copies and shall not convert any of the information contained in the paper copies into any electronic format. ~~The Receiving Party shall only make additional paper copies if such additional copies are (1)~~ Any printed pages of source code, and any other documents or things reflecting source code that have been designated by the producing party as “HIGHLY CONFIDENTIAL - SOURCE CODE” may not be copied, digitally imaged or otherwise duplicated, except in limited excerpts necessary to ~~prepare~~ attach as exhibits to depositions, expert reports, or court filings, ~~pleadings, or other papers (including a testifying expert’s expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case.~~ as discussed below. Any paper copies used during a deposition shall be retrieved by the ~~Producing~~ Receiving Party at the end of each day and must not be given to or left with a court reporter or any other unauthorized individual.<sup>19</sup>

(f) The Receiving Party’s outside counsel and/or expert shall be entitled to take notes relating to the source code but may not copy any portion of the source code into the notes. No copies of all or any portion of the source code may leave the room in which the source code is inspected except as otherwise provided herein. Further, no other written or electronic record of the source code is permitted except as otherwise provided herein.

(g) A list of names of persons who will view the source code will be provided to the producing party in conjunction with any written (including email) notice requesting inspection. The Receiving Party shall maintain a daily log of the names of persons who enter the locked room to view the source code and when they enter and depart. The Producing Party shall

<sup>19</sup> The nature of the source code at issue in a particular case may warrant additional protections or restrictions. For example, it may be appropriate under certain circumstances to require the Receiving Party to provide notice to the Producing Party before including “HIGHLY CONFIDENTIAL – SOURCE CODE” information in a court filing, pleading, or expert report.



1 be entitled to a copy of the log.

2 (h) The Receiving Party's outside counsel shall maintain a log of all copies of  
3 the source code (received from a Producing Party) that are delivered by the Receiving Party to  
4 any person. The log shall include the names of the recipients and reviewers of copies and  
5 locations where the copies are stored. Upon request by the Producing Party, the Receiving Party  
6 shall provide reasonable assurances and/or descriptions of the security measures employed by the  
7 Receiving Party and/or person that receives a copy of any portion of the source code.

8 (i) Except as provided in this paragraph, the Receiving Party may not create  
9 electronic images, or any other images, of the source code from the paper copy for use on a  
10 computer (e.g., may not scan the source code to a PDF, or photograph the code). The Receiving  
11 Party may create an electronic copy or image of limited excerpts of source code only to the  
12 extent necessary in a pleading, exhibit, expert report, discovery document, deposition transcript,  
13 other Court document, or any drafts of these documents ("SOURCE CODE  
14 DOCUMENTS"). The Receiving Party shall only include such excerpts as are reasonably  
15 necessary for the purposes for which such part of the Source Code is used. Images or copies of  
16 Source Code shall not be included in correspondence between the parties (references to  
17 production numbers shall be used instead) and shall be omitted from pleadings and other papers  
18 except to the extent permitted herein. The Receiving Party may create an electronic image of a  
19 selected portion of the Source Code only when the electronic file containing such image has been  
20 encrypted using commercially reasonable encryption software including password  
21 protection. The communication and/or disclosure of electronic files containing any portion of  
22 source code shall at all times be limited to individuals who are authorized to see source code  
23 under the provisions of this Protective Order. Additionally, all electronic copies must be  
24 labeled "HIGHLY CONFIDENTIAL - SOURCE CODE."

25 (j) To the extent portions of source code are quoted in a SOURCE CODE  
26 DOCUMENT, either (1) the entire document will be stamped and treated as HIGHLY  
27 CONFIDENTIAL- SOURCE CODE or (2) those pages containing quoted Source Code will be  
28 separately bound, and stamped and treated as HIGHLY CONFIDENTIAL - SOURCE CODE.

10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena ~~or~~ issued by a court, arbitral, administrative, or legislative body, or with a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~[Optional:]~~ or “HIGHLY CONFIDENTIAL – SOURCE CODE”<sup>21</sup> that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the ~~party~~ person who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.<sup>20</sup>

If the Designating Party timely<sup>21</sup> seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~[Optional:]~~ or “HIGHLY CONFIDENTIAL – SOURCE CODE”<sup>21</sup> before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

<sup>20</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

<sup>21</sup> The Designating Party shall have at least 14 days from the service of the notification pursuant to Section 10 to seek a protective order.

11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” ~~Optional~~ or “HIGHLY CONFIDENTIAL – SOURCE CODE”~~”~~. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and
3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this ~~court~~Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely objects or seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the ~~court~~Court.<sup>22</sup> Absent a ~~court~~Court order to the

<sup>22</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

~~When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).<sup>23</sup> This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.~~

<sup>23</sup> ~~Alternative: The parties may agree that the recipient of an inadvertent production may not “sequester” or in any way use the document(s) pending resolution of a challenge to the claim of privilege or other protection to the extent it would be otherwise allowed by Federal Rule of Civil Procedure 26(b)(5)(B) as amended in 2006. This could include a restriction against “presenting” the document(s) to the court to challenge the privilege claim as may otherwise be allowed under Rule 26(b)(5)(B) subject to ethical obligations.~~

~~An alternate provision could state: “If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return or destroy the specified information and any copies it has and may not sequester, use or disclose the information until the claim is resolved. This includes a restriction against presenting the information to the court for a determination of the claim.”~~

A Producing Party may assert privilege or protection over produced documents at any time by notifying the Receiving Party in writing of the assertion of privilege or protection. After being notified, a Party must promptly return or destroy the specified information and any copies it has and may not sequester, use or disclose the information until the claim is resolved. This includes a restriction against presenting the information to the Court for a determination of the claim. In addition, information that contains privileged matter or attorney work product shall be immediately returned if such information appears on its face to have been inadvertently produced. Pursuant to Federal Rule of Evidence 502(d) and (e), the production of a privileged or work-product-protected document is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or any other federal or state proceeding.

14. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by ~~the court in the future~~ agreement with other Parties or by applying to the Court if such agreement cannot be reached. Furthermore, without application to the Court, any party that is a beneficiary of the protections of this Order may enter a written agreement releasing any other party hereto from one or more requirements of this Order even if the conduct subject to the release would otherwise violate the terms herein.

14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

~~[14.3 Optional: Export Control]~~ 14.3 No Agreement Concerning Discoverability. The identification or agreed upon treatment of certain types of Disclosure and Discovery Material does not reflect agreement by the Parties that the disclosure of such categories of Disclosure and Discovery Material is required or appropriate in this action. The Parties reserve the right to argue

1 that any particular category of Disclosure and Discovery Material should not be produced.

2 14.4 Export Control. Disclosure of Protected Material shall be subject to all applicable  
 3 laws and regulations relating to the export of technical data contained in such Protected Material,  
 4 including the release of such technical data to foreign persons or nationals in the United States or  
 5 elsewhere. ~~The Producing Party shall be responsible for identifying any such controlled technical data,~~  
 6 ~~and the Receiving Party shall take measures necessary to ensure compliance.]~~Each party receiving  
 7 Protected Material shall comply with all applicable export control statutes and regulations. See,  
 8 e.g., 15 CFR 734.2(b). No Protected Material may leave the territorial boundaries of the United  
 9 States of America or be made available to any foreign national who is not (i) lawfully admitted  
 10 for permanent residence in the United States or (ii) identified as a protected individual under the  
 11 Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Without limitation, this prohibition  
 12 extends to Protected Material (including copies) in physical and electronic form. The viewing of  
 13 Protected Material through electronic means outside the territorial limits of the United States of  
 14 America is similarly prohibited. Notwithstanding this prohibition, Protected Material, exclusive  
 15 of material designated RESTRICTED CONFIDENTIAL - SOURCE CODE, and to the extent  
 16 otherwise permitted by law, may be taken outside the territorial limits of the United States if it is  
 17 reasonably necessary for a deposition taken in a foreign country. The restrictions contained  
 18 within this paragraph may be amended through the consent of the producing Party to the extent  
 19 that such agreed to procedures conform with applicable export control laws and regulations.

20 14.45 Filing Protected Material. Without written permission from the Designating Party  
 21 or a ~~court~~Court order secured after appropriate notice to all interested persons, a Party may not  
 22 file in the public record in this action any Protected Material. A Party that seeks to file under seal  
 23 any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be  
 24 filed under seal pursuant to a ~~court~~Court order authorizing the sealing of the specific Protected  
 25 Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a  
 26 request establishing that the Protected Material at issue is privileged, protectable as a trade  
 27 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file  
 28 Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then

1 the Receiving Party may file the Protected Material in the public record pursuant to Civil Local  
2 Rule 79-5(e)(2) unless otherwise instructed by the court.

3 14.6 Use of Protected Material at Hearing or Trial. In the event that a Party intends to use  
4 any Protected Material during a hearing or trial, subject to any challenges under Section 6, the  
5 Parties will not oppose any reasonable request by the Producing Party that the courtroom be  
6 sealed, if allowed by the Court, during the presentation of any testimony, evidence, or argument  
7 relating to or involving the use of any Protected Material. A Party that intends to use Protected  
8 Material during a hearing or trial shall provide reasonable notice to the Producing Party before  
9 introducing such information.

10 14.7 No Limitation on Legal Representation. Nothing in this Order shall preclude or  
11 impede Outside Counsel of Record's ability to communicate with or advise their client in  
12 connection with this litigation based on such counsel's review and evaluation of Protected  
13 Material, provided however that such communications or advice shall not disclose or reveal the  
14 substance or content of any Protected Material other than as permitted under this Order.

15 14.8 Agreement Upon Execution. Each of the Parties agrees to be bound by the terms of  
16 this Stipulated Protective Order as of the date counsel for such party executes this Stipulated  
17 Protective Order, even if prior to entry of this Order by the Court.

18 15. FINAL DISPOSITION

19 ~~Within~~ Within 60 days after the final disposition of this action, as defined in paragraph 4,  
20 each Receiving Party must return all Protected Material to the Producing Party or destroy such  
21 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
22 compilations, summaries, and any other format reproducing or capturing any of the Protected  
23 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
24 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
25 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all  
26 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
27 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
28 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to



1 retain an archival copy of all pleadings, ~~motion papers, trial, deposition, and hearing transcripts, legal~~  
2 ~~memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and~~  
3 ~~consultant and expert work product, even if such materials contain Protected Material.~~ motions and trial  
4 briefs (including all supporting and opposing papers and exhibits thereto), written discovery  
5 requests and responses (and exhibits thereto), deposition transcripts (and exhibits thereto), trial  
6 transcripts, and exhibits offered or introduced into evidence at any hearing or trial, and their  
7 attorney work product, which refers or is related to any CONFIDENTIAL and CONFIDENTIAL  
8 OUTSIDE COUNSEL ONLY information for archival purposes only. Any such archival copies  
9 that contain or constitute Protected Material remain subject to this Protective Order as set forth in  
10 Section 4 (DURATION).

11 16. INTERPRETATION, ENFORCEMENT, AND CONTINUING JURISDICTION

12 The United States District Court for the Northern District of California is responsible for  
13 the interpretation and enforcement of this Order. After final disposition of this litigation, the  
14 provisions of this Order shall continue to be binding except with respect to that Disclosure or  
15 Discovery Material that become a matter of public record. This Court retains and shall have  
16 continuing jurisdiction over the Parties and recipients of the Protected Material for enforcement  
17 of the provision of this Order following final disposition of this litigation. All disputes  
18 concerning Protected Material produced under the protection of this Order shall be resolved by  
19 the United States District Court for the Northern District of California.  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
2

3 ~~DATED:~~ \_\_\_\_\_  
4

SUSMAN GODFREY L.L.P.

5 DATED: January 7, 2021

/s/ Amanda K. Bonn

Amanda K. Bonn

*Attorneys for Plaintiffs*

7  
8 ~~DATED:~~ \_\_\_\_\_

WILLKIE FARR & GALLAGHER LLP

9 DATED: January 7, 2021

/s/ Eduardo E. Santacana

Eduardo E. Santacana

*Attorneys for Defendant Google LLC*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2  
3 DATED: \_\_\_\_\_  
4 [Name of Judge]  
5 United States District/Magistrate Judge  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
 \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have  
 read in its entirety and understand the Stipulated Protective Order that was issued by the United  
 States District Court for the Northern District of California on [date] in the case of \_\_\_\_\_  
~~[insert formal name of the case and the number and initials assigned to it by the court]~~ Rodriguez,  
et al v. Google LLC, Case No 3:20-CV-04688-RS. I agree to comply with and to be bound by  
 all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to  
 so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
 promise that I will not disclose in any manner any information or item that is subject to this  
 Stipulated Protective Order to any person or entity except in strict compliance with the  
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
 the Northern District of California for the purpose of enforcing the terms of this Stipulated  
 Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and telephone  
 number] as my California agent for service of process in connection with this action or any  
 proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
 [printed name]

Signature: \_\_\_\_\_  
 [signature]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28